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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

SEAN MAHSOUL, Plaintiff and Appellant, v. STUDENTCITY.COM, INC. etc., Defendant and Respondent.	A124725 (San Mateo County Super. Ct. No. CIV 478287)

I.

INTRODUCTION

Appellant Sean Mahsoul (Mahsoul) appeals from an adverse judgment entered in favor of respondent StudentCity.com, Inc., doing business as GradCity.com (StudentCity) after the trial court granted StudentCity's motion to dismiss and quash service of process for lack of personal jurisdiction. Mahsoul claims the trial court erred because the papers before it established that StudentCity had sufficient minimum contacts with the State of California to warrant imposition of specific personal jurisdiction, and that such an exercise of jurisdiction would be reasonable. We agree, and reverse the judgment in StudentCity's favor.[1]

[1] Because we reverse the judgment on the primary ground asserted, it is unnecessary to reach Mahsoul's alternative argument that the trial court erred in denying his request for a continuance to allow him to conduct discovery relating to the question of jurisdiction. Also, we do not decide StudentCity's alternative motion to dismiss based on the doctrine of forum non conveniens, a motion not ruled on by the trial court.

II.

PROCEDURAL BACKGROUND

Mahsoul filed a complaint against StudentCity and others seeking damages for personal injuries arising out of injuries he sustained while on a ski trip to Utah in December 2006. The complaint alleged that while Mahsoul was in Salt Lake City, Utah, a group of other trip participants forced their way into his hotel room, where he was then assaulted and injured.

Two causes of action were alleged against StudentCity. The fifth cause of action asserted that a StudentCity employee who was present during the fight negligently failed to restrain the person who directly caused the injuries to Mahsoul. The sixth cause of action alleged that StudentCity negligently trained its employees as to how to restrain unruly trip participants, and that this negligence contributed to the failure to restrain the primary combatant who assaulted Mahsoul.

Thereafter, StudentCity appeared specially and filed a motion to dismiss the complaint for lack of personal jurisdiction or, alternatively, based on the doctrine of forum non conveniens. After both sides filed memorandum and other papers supporting and opposing the motion, the court filed an order granting the motion to dismiss. The court found that there was an insufficient showing of general personal jurisdiction over StudentCity in California, concluding that StudentCity's minimum contacts in California were not "substantial, continuous, or systematic enough to support finding general jurisdiction." The court also concluded that specific personal jurisdiction was lacking as well, because "the nature of the controversy (injuries suffered in an assault in the State of Utah) are not substantially related to [StudentCity's] contacts in California.

As a result of the court's ruling, judgment was entered in favor of StudentCity on May 1, 2009. This timely appeal followed.

III.

DISCUSSION

A. Standard of Review

"When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. (*State of Oregon v. Superior Court* (1994) 24 Cal.App.4th 1550, 1557 [disapproved on another point in *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, fn. 8 (*Vons*)].) Once facts showing minimum contacts with the forum state are established, however, it becomes the defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable. (*Burger King* [*Corp. v. Rudzewicz* (1985)] 471 U.S. [462,] 476-477.) When there is conflicting evidence, the trial court's factual determinations are not disturbed on appeal if supported by substantial evidence. (*Felix v. Bomoro Kommanditgesellschaft* (1987) 196 Cal.App.3d 106, 111 . . . .) When no conflict in the evidence exists, however, the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record. (*Great-West Life Assurance Co. v. Guarantee Co. of North America* (1988) 205 Cal.App.3d 199, 204 . . . .)" (*Vons, supra*, 14 Cal.4th at p. 449.)

As we will discuss, the facts pertinent to our jurisdictional inquiry are undisputed. Accordingly, we will apply de novo review in deciding the question presented.

B. Legal Principles Pertaining to a Determination of Specific Personal Jurisdiction

Mahsoul argued in the trial court, as he does on appeal, that StudentCity was subject to this state's specific, rather than its general, personal jurisdiction. All of the principles necessary to decide whether the trial court correctly determined that there was an insufficient basis upon which to assert specific personal jurisdiction over StudentCity are contained in a few passages from the California Supreme Court's opinion in *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262 (*Pavlovich*). Thus, we quote from that most helpful decision:

"California courts may exercise personal jurisdiction on any basis consistent with the Constitutions of California and the United States. (Code Civ. Proc., § 410.10.) The

exercise of jurisdiction over a nonresident defendant comports with these Constitutions 'if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate " 'traditional notions of fair play and substantial justice.' " ' (*Vons*[*, supra,*] 14 Cal.4th [at p.]444 . . . , quoting *Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 . . . (*Internat. Shoe*).)

"Under the minimum contacts test, 'an essential criterion in all cases is whether the "quality and nature" of the defendant's activity is such that it is "reasonable" and "fair" to require him to conduct his defense in that State.' (*Kulko v. California Superior Court* (1978) 436 U.S. 84, 92, quoting *Internat. Shoe, supra,* 326 U.S. at pp. 316-317, 319 . . . .) '[T]he "minimum contacts" test . . . is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present.' (*Kulko,* at p. 92 . . . , quoting *Hanson v. Denckla* (1958) 357 U.S. 235, 246 . . . .) '[T]his determination is one in which few answers will be written "in black and white. The greys are dominant and even among them the shades are innumerable." ' (*Kulko,* at p. 92 . . . , quoting *Estin v. Estin* (1948) 334 U.S. 541, 545 . . . .)

"In making this determination, courts have identified two ways to establish personal jurisdiction. 'Personal jurisdiction may be either general or specific.' (*Vons, supra,* 14 Cal.4th at p. 445.) In this case, [Mahsoul] does not contend that general jurisdiction exists. We therefore need only consider whether specific jurisdiction exists.

"When determining whether specific jurisdiction exists, courts consider the ' "relationship among the defendant, the forum, and the litigation." ' (*Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414 . . . , quoting *Shaffer v. Heitner* (1977) 433 U.S. 186, 204 . . . .) A court may exercise specific jurisdiction over a nonresident defendant only if: (1) 'the defendant has purposefully availed himself or herself of forum benefits' (*Vons, supra,* 14 Cal.4th at p. 446); (2) 'the "controversy is related to or 'arises out of' [the] defendant's contacts with the forum" ' (*ibid.,* quoting *Helicopteros, supra,* 466 U.S. at p. 414 . . .); and (3) ' "the assertion of personal

jurisdiction would comport with 'fair play and substantial justice' " ' (*Vons, supra*, 14 Cal.4th at p. 447, quoting *Burger King*[, supra,] 471 U.S. [at pp. 472-473 . . . .)

" 'The purposeful availment inquiry . . . focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court's jurisdiction based on' his contacts with the forum. (*U.S. v. Swiss American Bank, Ltd*. (1st Cir. 2001) 274 F.3d 610, 623-624 . . . .) Thus, the 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts [citations], or of the 'unilateral activity of another party or a third person." [Citations.]' (*Burger King, supra,* 471 U.S. at p. 475 . . . .) 'When a [defendant] "purposefully avails itself of the privilege of conducting activities within the forum State," [citation], it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.' (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297 . . . ." (*Pavlovich, supra,* 29 Cal.4th at pp. 268-269.)

C. Facts Presented Bearing on the Question of Jurisdiction

As noted, this personal injury lawsuit resulted from injuries Mahsoul allegedly received in a physical altercation in a hotel room in Salt Lake City, Utah, while he was attending a ski vacation booked through StudentCity's website.

StudentCity is a Delaware corporation headquartered in Peabody, Massachusetts. It is not registered to do business in California, although its "Customer Agreement" notes that it is a licensed California "Seller of Travel" doing business under "#CST 2054787-40." The agreement notifies its customers that California law requires certain sellers of travel to maintain a trust account or bond, and StudentCity uses a bond issued by Capitol Indemnity Corporation in Madison, Wisconsin. StudentCity does not participate in California's Travel Consumer Restitution Fund. It does not own property in California and has no offices here.

StudentCity organizes trips for high school and college students. None of the tours involve locations in California. StudentCity does not advertise in any mass media that targets California residents. However, it does advertise in student newspapers and with flyers, which are distributed on California college campuses and in California high schools. In 2007, its sales in California were less than one percent of its sales "by number of customers." Currently, sales to California residents comprise less than eight percent of total sales.

The transaction that resulted in Mahsoul's ski trip was administered in StudentCity's Massachusetts offices, and was conducted primarily over the Internet using StudentCity's website. The original trip deposit of $100 was physically mailed to StudentCity's Massachusetts office, and a second payment of $396 was made online through its website.

Mahsoul was a 17-year-old high school student when he took the ski trip to Utah. In addition to himself, seven of his classmates went on the trip as well. They were all picked up in Southern California by a private bus provided by StudentCity, and returned by private bus to Southern California at the conclusion of the trip. Someone from StudentCity was present on each transportation leg "to make sure everyone who was supposed to be on the bus was there." StudentCity's parental consent form, which Mahsoul's parents were required to sign, confirmed that StudentCity had hired staff to accompany trip participants to the destination "for general assistance and informational purposes only. They [were] not chaperones or temporary guardians."

As a result of his injuries, Mahsoul was treated by eight doctors over a period of two years. Except for the emergency treatment he received in Utah, all treatment was administered in Los Angeles, California.

D. Mahsoul Met His Burden of Showing Facts Justifying the Exercise of Specific Personal Jurisdiction Over StudentCity

As noted, the exercise of specific personal jurisdiction over a non-California entity entails an analysis of three primary factors, including whether (1) StudentCity "purposefully availed" itself of forum benefits; (2) Mahsoul's lawsuit is related to or

arises out of StudentCity's contacts with California; and (3) the exercise of personal jurisdiction would comport with "fair play and substantial justice." (*Vons*, *supra*, 14 Cal.4th at p. 447.) Only if all three of these inquiries are answered affirmatively does California have the constitutional ability to entertain Mahsoul's action against StudentCity. We examine each factor in turn.

Purposeful availment " 'focuses on the defendant's intentionality. . . . This prong is only satisfied if the defendant purposefully and voluntarily directs its activities toward the forum so that he should expect, by virtue of the benefit' " received, that it would be subject to the court's jurisdiction. (*Pavlovich*, *supra*, 29 Cal.4th at p. 269.) We conclude that Mahsoul has satisfied this element of the analysis, despite the facts that StudentCity has no offices or property in California and its travel program includes only destinations outside of California. Importantly, while no mass advertisements were targeted at California students, StudentCity strategically marketed its travel program by sending out flyers and advertisements to colleges and high schools in this state in the obvious hope of enticing students to sign up for its trips.

In order to conduct sales of travel in California, StudentCity concedes it has registered as a "Seller of Travel" in California. This requirement is part of a series of statutes set forth in the California Business and Professions Code to protect persons in this state from "financial hardship," to eliminate "unfair advertising, sales, and business

practices," and "to encourage competition, fair dealing, and prosperity in the travel business." (Bus. & Prof. Code, § 17550.)[2]

Under the Business and Professions Code, " 'Seller of [T]ravel' means a person who sells, provides, furnishes, contracts for, arranges, or advertises that he or she can or may arrange, or has arranged, wholesale or retail, either of the following: [¶] . . . (2) Land or water vessel transportation, other than sea carriage, either separately or in conjunction with other travel services if the total charge to the passenger exceeds three hundred dollars ($300)." (Bus. & Prof. Code, § 17550.1, subd. (a).) California law then explicates in detail what "Seller[s] of [T]ravel," such as StudentCity, must do in connection with the sale of their services to people in this state, including registering with the state Attorney General, and the posting of a bond in case a passenger is harmed by any violation of the article. (Bus. & Prof. Code, § 17500.13 et seq.)

In the case of the ski trip to Utah taken by Mahsoul and his classmates, StudentCity arranged to have the high school students, at least some of whom were minors, picked up by private bus in Southern California, and driven to and from the trip destination in Utah, with a StudentCity employee or agent accompanying the students on the bus trips. Apparently, StudentCity also had employees or agents at the hotel in Salt Lake City where the assault on Mahsoul occurred.

Given these facts alone, we have no hesitation in concluding that StudentCity purposefully availed itself of the benefits of doing business in California, and readily

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[2] The full statutory statement of Legislative intent in regulating "Seller[s] of Travel" is set forth in the first paragraph of section 17550, as follows: "The Legislature finds and declares that certain advertising, sales, and business practices of sellers of travel have worked financial hardship upon the people of this state; that the travel business has a significant impact upon the economy and well-being of this state and its people; that problems have arisen that are peculiar to sellers of travel business; and that the public welfare requires regulation of sellers of travel in order to eliminate unfair advertising, sales, and business practices; to establish standards that will safeguard the people against financial hardship; to encourage competition, fair dealing, and prosperity in the travel business; and to provide certain and reliable funding for the seller of travel registration program and enforcement by the office of the Attorney General of this article."

accepted the statutory burdens of so doing as well. Its conduct directed at persons in this state were neither " 'random,' " " 'fortuitous,' " or " 'attenuated,' " nor were they the " 'unilateral activity of another party or a third person.'. . ." (*Pavlovich*, *supra*, 29 Cal.4th at p. 269.) While StudentCity makes much of the fact that, at the time, only about one percent of its business was with California residents, that fact would have more cogency if the issue were one of general, rather than specific, personal jurisdiction. In any event, the record is devoid of any information of how much gross revenue this figure represents to StudentCity and it is of limited value to an analysis of whether StudentCity purposely availed itself of the benefits of doing business in this state.

Turning to the second prong, we also agree with Mahsoul that his lawsuit is related to or arises out of StudentCity's contacts with California. In examining this prong supporting specific jurisdiction, our high court's decision in *Vons* is instructive. In that case, the court rejected the overly broad and mechanical "but for" causation test previously adopted by the Court of Appeal in *State of Oregon v. Superior Court*, *supra*, 24 Cal.App.4th 1550. (*Vons*, *supra*, 14 Cal.4th at p. 465, fn. 8.) The *Vons* court explained, "We are not persuaded it is productive to focus upon whether the injury would have occurred 'but for' the forum contacts, at least when an ongoing franchise relationship is the forum contact." (*Vons*, *supra*, 14 Cal.4th at p. 467.) Similarly, the Supreme Court also rejected a much more narrow test adopted by the appellate court; i.e., that the injury had to have been proximately caused by the forum contact. (*Id*. at p. 462.)

Instead, after an exhaustive examination of its own precedent and that of the federal court, the high court settled on a test that focused on the "substantial connection" between the forum contacts and the plaintiff's claim to warrant the exercise of specific jurisdiction. (*Vons*, *supra*, 14 Cal.4th at p. 452.) "A claim need not arise directly from the defendant's forum contacts in order to be sufficiently related to the contact to warrant the exercise of specific jurisdiction. Rather, as long as the claim bears a substantial connection to the nonresident's forum contacts, the exercise of specific jurisdiction is appropriate. The due process clause is concerned with protecting nonresident defendants from being brought unfairly into court in the forum, on the basis of random contacts.

That constitutional provision, however, does not provide defendants with a shield against jurisdiction when the defendant purposefully has availed himself or herself of benefits in the forum. The goal of fairness is well served by the standard we originally set out in *Cornelison* [*v. Chaney* (1976)] 16 Cal.3d 143, that is, there must be a substantial connection between the forum contacts and the plaintiff's claim to warrant the exercise of specific jurisdiction. . . .)" (*Vons, supra,* 14 Cal.4th at p. 452, italics omitted; accord, *Snowney v. Harrah's Entertainment, Inc* (2005) 35 Cal.4th 1054, 1068 (*Snowney*) [reaffirming "substantial connection" standard].)

The facts of this case compel the conclusion that there is a substantial nexus or connection between StudentCity's forum activities and Mahsoul's claim. (*Vons*, *supra*, 14 Cal.4th at p. 456.) There was evidence StudentCity was licensed and bonded in California and that it purposefully and voluntarily directed its promotional activities toward California students, creating a substantial connection with this forum. (Compare *Snowney*, *supra*, 35 Cal.4th at pp. 1065-1066 [Nevada hotels advertised extensively in California, maintained a Web site and toll-free telephone number, regularly sent mailings, and obtained a significant percentage of patrons from California].) StudentCity provided supervised transportation for Mahsoul to and from Utah, and the incident forming the basis for Mahsoul's claim against StudentCity occurred in the course of StudentCity's supervision of the trip. These facts establish a substantial connection between StudentCity's contacts with California and the circumstance giving rise to this lawsuit sufficient to support the legal conclusion that the claim "related to" or "arises out of" StudentCity's contacts with California. (*Vons, supra,* 14 Cal.4th at p. 451.)

Relying on *Roman v. Liberty University, Inc*. (2008) 162 Cal.App.4th 670 (*Roman*), StudentCity contends that there was no substantial connection because Mahsoul's legal theories of liability against StudentCity, based on respondeat superior and negligent training, have no connection with the forum contacts. First, we point out that *Roman* is factually distinguishable from this case. In *Roman*, a California resident sued a Virginia-based college for personal injuries he received when he was assaulted by another student with whom he had gone drinking. On the way back to campus, the

plaintiff fell from a train trestle, sustaining major injuries. The plaintiff alleged that he had been recruited to play football for the defendant college, that the college had mailed him scholarship documents which he signed in California, and that the college had seven Californians on its football team roster. (*Id.* at pp. 674, 680.)

The *Roman* court concluded that there was no substantial connection between the college's contacts with California, and the events giving rise to the lawsuit. We agree. Other than the fact that the plaintiff would not have been in school in Virginia "but for" the defendant college's recruitment effort, his injuries had no relationship to football, or even to his status as a matriculating student at the college. He was hurt following an off-campus fight after a night of drinking with another teammate. Unlike the facts in *Roman*, the assault on Mahsoul related to, and arose out of, StudentCity's contacts with California. He was allegedly injured at the hotel in Salt Lake City, Utah, where the ski participants were staying while attending their ski trip. All the arrangements, including the hotel booking, had been made by StudentCity as part of the ski vacation package it sold to Mahsoul.

Moreover, in making the argument that Mahsoul's theories of liability have no "connection to [StudentCity's] limited contacts in California," StudentCity seems to be urging the very "proximate cause" test rejected by the Supreme Court in *Vons.* In rejecting this analytical approach, the *Vons* court noted that requiring the forum contacts to be a proximate cause of the injury would result in virtually no tort actions being brought against foreign entities whose contacts with California were contractual. (*Vons, supra,* 14 Cal.4th at p. 462.) The court also commented that using the narrow proximate cause test erroneously employed by the court of appeal in that case, "improperly imported common law policies limiting tort liability into the entirely unrelated field of jurisdiction. [Citation.]" (*Id.* at p. 464.)

Having found that Mahsoul satisfied his burden of showing there were minimum contacts between StudentCity and California sufficient to support specific personal jurisdiction, it becomes StudentCity's burden to demonstrate that the exercise of jurisdiction would be unreasonable. (*Burger King, supra,* 471 U.S. at pp. 476-477.) In

making our determination that StudentCity has failed to meet its burden on this last prong of the personal jurisdiction analysis, we have considered those factors mandated by applicable state law, including the burden on defendant of having to defend the action, the interests of California in the litigation, and Mahsoul's interest in obtaining relief in his home state. (*Snowney, supra,* 35 Cal.4th at p. 1070.) StudentCity has not convinced us that it would be unfair to require it to defend this personal injury action in California.

StudentCity advertised its vacation services using flyers distributed at various high schools and colleges in California, presumably including Mahsoul's high school. After entering into a for-profit commercial contract with Mahsoul and his parents, StudentCity undertook the responsibility of transporting Mahsoul, a minor living with his parents in Southern California, and other students from Mahsoul's high school to and from Utah. Mahsoul and his fellow students were accompanied by representatives of StudentCity while they enjoyed a ski vacation. In order to conduct this business, StudentCity had to comply with the stringent requirements of this state's Business and Professions Code as a "Seller of Travel" here. Mahsoul points out that two other defendants are residents of California, that students from his school witnessed events surrounding the assault, and that virtually all of the medical professionals who treated him are situated in California as well. Under these circumstances, we conclude it is fair to require StudentCity to defend itself in California against an action involving personal injuries sustained by one of the California trip participants.[3]

[3] As noted earlier, in finding grounds to assert specific personal jurisdiction, we do not decide the alternative motion brought by StudentCity, that the action should be dismissed based on the doctrine of forum non conveniens. However, many of the factors relevant to our jurisdictional analysis are similarly involved in considering that alternative motion. Also, the record shows that StudentCity has raised forum selection, choice of law issues, as well as pleaded the affirmative defense that Mahsoul's claims are barred by a written, signed release. We need not, and do not, decide any of these issues which are not currently before us.

IV.

DISPOSITION

The trial court's order dismissing this case for lack of personal jurisdiction is hereby reversed, and the judgment entered following that dismissal is vacated. Costs on appeal are awarded to Mahsoul.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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SEPULVEDA, J.